SUPREME COURT, U.S.

FILED

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MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-808

ROBERT C. MILLER,

Petitioner,

vs.

TED W. BROWN, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

AND APPENDIX

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The petitioner respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on August 22, 1973 and September 10, 1973.

OPINION BELOW

The orders of the Court of Appeals appear in the Appendix hereto. The orders of the Court of Appeals affirmed the judgment of the United States District Court, Southern District of Ohio, Western Division. The District Court Order also appears in the Appendix.

JURISDICTION

The final order of the Court of Appeals for the Sixth Circuit was entered on September 10, 1973 and this petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, subsection (1) or, in the alternative, under common law certiorari, 28 U.S.C. 1651.

QUESTIONS PRESENTED

Were the orders appropriate to the complaint and the appeal?

STATUTORY PROVISIONS INVOLVED

Article XXII of the Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

This suit was originally filed on February 6, 1973 by the petitioner as a class action against Ted W. Brown, Secretary of State of the State of Ohio and certain employees and the members of the Hamilton County Board of Election, State of Ohio. The petitioner sought an injunction to redeem and protect the voting rights of the plaintiff and his class. After amendments to the complaint and motions to dismiss, the district court entered an order to dismiss the case stating there was absolutely no merit to the amended complaint.

On appeal, the appellees moved to affirm the judgment of the District Court. The Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court. A subsequent petition for reexamination of the order was overruled and a motion for leave to file a motion to review en banc was judged to be without merit.

BASIS FOR FEDERAL JURISDICTION

Article III Section 1 of the Constitution of the United States of America states that "The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish". Article III Section 2 states "The Judicial power shall extend to all cases, in law and equity, arising under the Constitution, . . .".

This Court has jurisdiction of the action pursuant to Title 42, U.S.C.A. Section 1983 and 1971, and Title 28, U.S.C.A., Sections 1343 (3) and (4), 1331, 2201, and 2202. (28 U.S.C. 2403 may be applicable.)

REASON FOR GRANTING CERTIORARI

This case presents significant questions which this court should resolve.

The Sixth Circuit Court of Appeals affirmed an order of the District Court which stated that the appellant was asking that an amendment to the Constitution be declared unconstitutional.

This is incorrect as the plaintiff-appellant was asking for an injunction. The appellant is suggesting that an injunction is not an inferior order.

By the amendment process the Congress and the legislatures made a judgment that the voters had abused their privilege of voting by ignoring precedent and electing a man to a third and fourth term as President. It is submitted that Congress improperly extended its authority under Section 4 Article I of the Constitution to "make or alter such regulations" for its own members to that of the regulation of the election of the President.

This action by Congress does not do justice to the concept of separation of powers and makes voting for President a privilege subject to the will of Congress and not the precious right which has been obtained consistent with the preamble to the Constitution which states "We the people . . .". The vote for President unlimited by the limitation of terms in office is citizen power in separating the powers.

The plaintiff-appellant approaches the Court for a remedy on the assumption that the courts and judicial power were incorporated in but not created by the Constitution and are for the people directly.

CONCLUSION

For the reason set forth above, a writ of certiorari should issue to review the judgment of the Sixth Circuit.

Respectfully submitted,

ROBERT C. MILLER
3818 Congreve Avenue
Cincinnati, Ohio 45213

Dated: November 13, 1973

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action No. 8719

ROBERT C. MILLER,

Plaintiff,

v.

TED W. BROWN, et al.,

Defendants.

ORDER

(Filed March 19, 1973)

This action is brought praying this Court to declare that the Twenty-second Amendment to the United States Constitution is unconstitutional, i.e., is violative of the First, Ninth, Twelfth, Fourteenth, and Fifteenth Amendments to the Constitution in that it violated the plaintiff's alleged right to vote for a twice-elected President of the United States a third time. The defendants herein have filed motions to dismiss.

There is absolutely no merit to the amended complaint. Therefore, it is dismissed at plaintiff's costs.

/s/ TIMOTHY S. HOGAN
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 73-1409

ROBERT C. MILLER,
Plaintiff-Appellant,

v.

TED BROWN, Individually, and as
Secretary of State of Ohio, et al.,
Defendant-Appellees

ORDER

(Filed August 22, 1973)

Before: WEICK, MILLER and LIVELY, Circuit Judges.

This is an appeal from the district court's dismissal of an action seeking both declaratory and injunctive relief. It is alleged that the 22nd amendment to the United States Constitution is unconstitutional in that it violates the plaintiff-appellant's alleged right to vote a third time for a twice-elected President.

The district court stated succinctly that "there is absolutely no merit to the amended complaint."

On motion of the defendant-appellee to affirm the judgment in the above styled case, and on consideration, the

judgment of the district court is affirmed under 6th Cir. R. 8 (b), it being manifest that the questions on which the decision of the cause depends are so unsubstantial as to need no further argument.

ENTERED BY ORDER OF THE COURT

/s/ JAMES A. HIGGINS
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 73-1409

ROBERT C. MILLER,
Petitioner-Appellant,

v.

TED W. BROWN, et al.,
Respondent-Appellee.

ORDER

(Filed September 10, 1973)

Before: WEICK, MILLER and LIVELY, Circuit Judges.

We have considered the petition for rehearing filed by the petitioner-appellant on August 24, 1973, and we find it to be without merit.

It is accordingly ORDERED and ADJUDGED that the said petition be and the same is hereby overruled.

ENTERED BY ORDER OF THE COURT.

/s/ JAMES A. HIGGINS
Clerk

